

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

CRL.A.No. 2036 of 2004(C)

SC.449/2003 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA
CP.12/2003 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU
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APPELLANT: APPELLANT;

BABU, S/O.KOYAKUTY, C.NO. 8332,
CENTRAL PRISON, THIRUVANANTHAPURAM.

BY ADV. ADV.BHAGAVANT SINGH (STATE BRIEF)

RESPONDENTS:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SHRI K.C. SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B. Koshy & T.R. Ramachandran Nair, JJ.

Crl.Appeal NO.2036 of 2004

Dated this the 9th day of February, 2007

JUDGMENT

Koshy, J.

The appellant/accused was charge-sheeted for murdering his own child (4 years old son). He was convicted for offence punishable under Section 302 I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of Rs.2,000/-.

2. The prosecution case was that on 8.5.2003 at 9.45 a.m. at the western courtyard of the house of the accused, the accused caught hold of his 4 year old son named Bibin and rotated the child in the air ignoring the protest of P.W2 who is his wife and after manhandling her, the accused beat the child's head on the stepping stone of the house holding its legs two times and consequently the child sustained severe injuries and died and thus the accused murdered his child due to previous enmity towards P.W.2, his wife.

3. Ext.P5 is the postmortem certificate issued by the doctor, P.W.8. The doctor certified the following in Ext.P5:

“ Post Mortem appearances: Dead body of a child (male) 4 years lying supine on the P.M. table of THQH, KPLY. Rigor mortise well

established. Bleeding (clotted) from left ear, nostrils and mouth. Occipital part of skull fractured and contusion of the same site - bleeding. There was a haematoma.

Internal exam Lungs, heart thymus examined - normal. Liver spleen, kidneys normal. Stomach semi digested food (rice). Bladder contains 50 ml urine cranial cavity opened. Cranium was fractured, overlapping irregular large fracture extending from the middle of occiput extending laterally to involve the mastoid bone and left parietal bone posteriorly. Base of skull was fractured involving the root of mouth. Extramural and sub arachnoid hemorrhage present posteriorly.”

He opined that this is due to severe head injury. During examination before the Court, the doctor clearly stated that death can be caused as suggested by the prosecution. He deposed as follows:

4. P.W.1 is a close neighbour who was residing only 20 ft. away from the house of the accused. According to him, on 8.5.2003 at 9.45 a.m. while he was in home, from the courtyard of the house of the accused, he heard a cry of P.W.2 to the effect that her child is being killed. She requested his

help and P.W.1 got out of his house. Then he saw the accused hitting the head of his child holding its legs on the stepping stone of his house and after that he hit the child on the ground also. After that the accused attempted to snatch another child from P.W.2 who is his wife. P.W.2 did not give the child. Then the accused fisted P.W.2. P.W.2 fell down. The accused again manhandled P.W.2. Then P.W.1 directed P.W.2 to run and she escaped with the child. The accused then again hit the deceased child two times on the stepping stone. After that the accused ran away towards the region of the church. P.W.2, the wife of the accused also gave the same story. P.W.3 who is the elder child of the accused also deposed that he saw the accused hitting his younger brother on the stepping stone.

5. The only defence taken up by the accused in the statement under Section 313 Cr.P.C. as well as in the cross examination during the trial that this was done without knowing what he was doing in an epileptic stage. For that he relied on Ext.D2 dated 27.2.2004 which is an O.P. ticket given by a Neurologist (P.W.7). P.W.7 stated that he has given the prescription for epileptic treatment. He has seen the patient earlier and he was normal. He also stated that during epilepsy, there may be abnormal behaviour. But that will not be an insanity and at that time, he will not be against any particular person. It is true that P.Ws.2 and 3 also stated that he had on earlier

occasions, suffered epilepsy and at that time he will fall down. But there was no violence earlier. It is also stated by P.W.2 that she has three children, P.W.3, the deceased and another child. At the time of the incident, she was also carrying. She also stated that the accused had suspicion about her chastity and she had to quarrel with him and for the last one month they were also not in talking terms. She further stated that he used to tell that one child will be killed and he will go to jail. The younger child escaped because she ran away with the child and the eldest child, P.W.3 deposed that he also ran away on seeing this incident. Apart from Ext.P2 O.P. ticket and suggestion that occasionally the accused was suffering from epilepsy, there was no evidence in this case to show that at the time of the incident, he had an epileptic attack. Of course, doubting the chastity of his wife, he was enmity towards his wife and they were not in talking terms. During this heinous act he also attacked P.W.2. There was no evidence to show that at that time he did not know the nature of the act he was doing. In fact, immediately after killing the child, he ran away to the church side. That shows that he was aware of the act he was doing. The primary burden is on the accused to prove his defence. Of course, if a prima facie case was adduced by the accused to show that he was not aware of the act he was doing at the time of the incident, he may get the benefit of Section 84. In

this connection, we refer to the decision of the Apex Court in State of M.P. v. Ahammadulla (1961 (2) Crl.L.J. 43 SC). In this case there is no evidence to show that the act was done under epileptic automation. In fact, evidence adduced show that he had not shown any epileptic symptoms on the date in question, even though the act was very cruel. The evidence adduced in this case conclusively prove that accused is guilty of the offence alleged and he was not entitled to get the benefit of Section 84 of Indian Penal Code.

In the above circumstances, the conviction and sentence passed against the appellant is confirmed. Appeal is dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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J.B. Koshy & T.R. Ramachandran Nair, JJ.

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JUDGMENT

Dated this the 9th day of February, 2007